

REMARKS

Reconsideration of the application is respectfully requested for the following reasons:

1. Objection to Drawings Under 37 CFR §1.83(a)

This objection is respectfully traversed on the grounds that the "ball received in the chamber" is depicted in Figs. 1 and 2 as element 222. While Fig. 2 shows the ball outside the chamber since Fig. 2 is an exploded view, Fig. 1 shows the ball *inside* the chamber 221. The inclusion of a ball inside a chamber is of course a well-known feature of conventional whistles..

Although the ball is clearly depicted in the original drawings, it is noted that reference number 222 was inadvertently omitted from the description. Page 2, line 13 has accordingly been amended by inserting -222- after "ball." In addition, the specification has been amended to correct various grammatical and idiomatic errors. Because the changes are all formal in nature, it is respectfully submitted that they do not involve "new matter."

2. Rejection of Claims 1, 3, and 5-10 Under 35 USC §102(b) in view of U.S. Patent No. 6,329,927 (Hobson)

This rejection is respectfully traversed on the grounds that the Hobson patent does not disclose or suggest a whistle and lamp, as presently claimed, in which:

- a recess is provided at a lateral side of the whistle (page 2, lines 14-15);
- a battery is received in the recess (page 2, lines 23-25);
- the lamp is provided in a tube having an end in communication with the recess so that a terminal of the lamp can directly contact the battery (page 2, lines 15-16);
- a cover is detachably provided on the whistle member to cover the battery and parts of the lamp (col. 3, lines 3-4);
- the cover has an aperture at a center thereof (col. 3, lines 4-5); and

- the lamp is switched on an off by a button provided in the aperture (page 3, lines 7-8), the button being arranged to cause the other terminal to directly contact the battery and switch on the lamp (page 3, lines 11-15).

Each of these features is now positively recited in claim 1, and supported by the original specification as indicated above.

Because of the arrangement of the battery in a recess on the side of the whistle, the placement of the lamp in a tube that communicates with the recess so that a terminal of the lamp can directly contact the battery, and the placement of the on/off button in an aperture of a cover for the recess, the claimed whistle is much more compact and easily manipulated than the whistle illustrated in the Hobson patent. Instead of a switch positioned in the cover for a battery recess in the side of the whistle, Hobson places the lamp at the end of tube attached to the *rear* of the whistle (as described in col. 4, lines 25 *et seq.*—"Second Embodiment"), and switches the lamp using a bar 27 activated by rotation of the whistle, or by water entering the cap, as explained in col. 4, lines 44-56 (the first embodiment, discussed in cols. 3-4 of Hobson, does not include a whistle).

In addition, whereas the claimed lamp is powered by direct engagement between the lamp terminals and the battery, Hobson requires a circuit board 13, which greatly increases the size of the assembly in comparison with that of the present invention. Nothing in the Hobson patent suggests elimination of the circuit board in favor of the claimed direct contact, established by a button in a lateral side of the whistle. To the contrary, the flashlight lamp of Hobson is required to be situated in a waterproof chamber, with the switch being in a separate chamber (so that, for example, the flashlight will turn on when the switch is exposed to water, thereby providing a signal when a person is lost at sea). Since a whistle is inherently open, so that air can be blown through the whistle, and since Hobson places its lamp in a tube that includes a waterproof chamber, Hobson *teaches away* from including the lamp in a tube that is *in communication with* a recess in the side of the whistle. Instead, Hobson provides the whistle as an accessory that can be screwed onto the end of the flashlight tube.

The claimed whistle and lamp structure is much simpler and more compact than the whistle and lamp arrangement depicted in Figs. 4 and 5 of the Hobson patent, which does not disclose or suggest a number of features of the claimed invention, including the placement of the lamp in a tube that communicates with a battery-containing recess in a side of the whistle, direct contact between terminals of the lamp and the battery, and placement of the terminal-moving button in an aperture in the battery recess cover. Therefore, withdrawal of the rejection of claims 1, 3, and 5-10 is respectfully requested.

3. Rejection of Claim 2 Under 35 USC §103(a) in view of U.S. Patent Nos. 6,329,927 (Hobson) and 4,739,990 (Aguirre)

This rejection has been rendered moot by the cancellation of claim 2.

In addition, insofar as the rejection may be prospectively applied to amended claim 1, the rejection is respectfully traversed on the grounds that the Aguirre patent, like the Hobson patent, does not disclose or suggest a whistle and lamp, as presently claimed, in which (i) the lamp is placed in a tube that is in communication with a battery-containing recess in a side of the whistle; (ii) the terminals of the lamp directly contact the battery; and (iii) the terminal-moving switch is in the form of a button situated in an aperture in the battery recess cover. To the contrary, while Figs. 3A and 3B of Aguirre depict a self-defense device with a lamp, and Figs. 7A and 7B depict a self-defense device with a battery-operated whistle, Aguirre does not teach how to combine a whistle and lamp, much less by means of the claimed recess, tube, cover, button, and lamp terminals.

Accordingly, the Aguirre patent could not have suggested modification of the device of Hobson to obtain the claimed invention, and withdrawal of the rejection under 35 USC §103(a) in view of the Hobson and Aguirre patents is respectfully requested.

4. Rejection of Claim 4 Under 35 USC §103(a) in view of U.S. Patent Nos. 6,329,927 (Hobson) and 4,314,316 (Gertler)

This rejection is respectfully traversed on the grounds that the Gertler patent, like the Hobson patent, does not disclose or suggest a whistle and lamp, as presently claimed, in which (i) the lamp is placed in a tube that is in communication with a battery-containing recess in a side of the whistle; (ii) the terminals of the lamp directly contact the battery; and (iii) the terminal-moving switch is in the form of a button situated in an aperture in the battery recess cover.

To the contrary, the Gertler patent teaches an arrangement in which a lamp is placed within the chamber of the whistle, separate contacts are provided to connect a battery, and electrical connection is established when air blown into the whistle pushes on the contact, *i.e.*, when the whistle is blown, rather than upon pushing of a button. Not only does Gertler not suggest the features of the claimed invention, but the Gertler patent does not provide any possible reason for modification of the Hobson arrangement to include a whistle-activated lamp, particularly since Hobson relies on separation of the whistle, switch, and lamp, as discussed above.

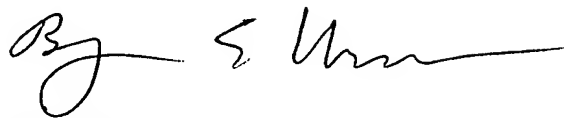
Because the Hobson and Gertler patents fail to teach any of the positively recited features of the claimed invention, such as the claimed lamp placement, contact arrangement, or button, it is respectfully submitted that the rejection under 35 USC §103(a) in view of the Hobson and Gertler patents is improper and should be withdrawn.

Having thus overcome each of the rejections made in the Official Action, withdrawal of the rejections and expedited passage of the application to issue is requested.

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Respectfully submitted,

BACON & THOMAS, PLLC

A handwritten signature in black ink, appearing to read 'By E Urcia', written over a horizontal line.

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